

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 70] NEW DELHI, THURSDAY, MARCH 26, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 21st March 1953

S.R.O. 586.—Whereas the election of Shri Senjalia Mohanlal Virjibhai of Amrell, as a member of the Legislative Assembly of Bombay from the Okhamandal-Dhari-Khamba constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ranchhodlal Liladhar Vayeda of 1788/2, Desai Pole, Khadia, Ahmedabad;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 46 OF 1952

Exh. No. 19

CORAM:

Shri B. C. Vakil, B.A. (Hons.), LL.B.—Chairman.

Shri T. P. Ghogale, B.A. (Hons.), LL.B., Shri A. A. Adarkar, B.A., LL.B.—Members of the Election Tribunal.

In the matter of the Representation of the People Act, 1951.

AND

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

AND

In the matter of the Election Petition presented thereunder by Shri Shri C. C. Bhatt. Ranchhodlal Liladhar Vayeda, residing at present 1788/2, Desai pole, Khadia, Ahmedabad.—Petitioner.

Versus

Shri P. B. Patwari. 1. Sanjalia Mohanlal Virjibhai, residing near Jubilee Dharamshala, Amreli.

2. Thakar Jayantilal Jamnadas, residing opposite Devi Bhuvan Dharamshala, Dwarka.

3. Vyas Dhirajlal Vakil, residing at Dhari—Respondents.

The petitioner in this case, Shri Ranchhodlal Liladhar Vayeda, has made this petition for a declaration that the election of respondent No. 1 for the Legislative

Assembly seat from the Olha-Dhari-Khambha constituency be declared wholly void on the following amongst other grounds. According to the averments in the petition, the petitioner was an elector entitled to stand for election and that the Returning Officer was wrong in rejecting his nomination paper. The petitioner had filed his nomination paper on 24th November 1951 and on the date of the scrutiny the Returning Officer for reasons stated in his order dated 27th November 1951 upheld the objection raised by respondent No. 1 and rejected the nomination paper on the ground that the said nomination paper violated Section 36 (2) (d) of the Representation of the People Act. It is against that order of the Returning Officer that the present petition has been filed. In the meantime elections were held where respondent No. 1 was declared duly elected. All the respondents including respondent No. 1 were the duly nominated candidates at the said election and so all of them were made parties. The only contesting respondent is respondent No. 1 who by his written statement Ex. 11 contended that the order passed by the Returning Officer was correct for according to him the nomination paper did not comply with the provisions of the law. In particular he contended that the identity of the petitioner could not be established and that column No. 8 of the nomination paper which ought to have been filled up as required by law was left blank. He, therefore, contended that the petition should be dismissed with costs.

2. The only point for determination is: Whether the rejection of the nomination paper of the petitioner was proper?

3. For the reasons which follow the Tribunal answers this point in the affirmative.

REASONS

4. At the outset, it may be stated that as the law now stands if the Tribunal hold that the rejection of the nomination paper of the petitioner was improper the only course open to the Tribunal is to declare the election for the said constituency wholly void. On that point there was no dispute at the Bar. However, that constituency does not arise in this case as, in the opinion of the Tribunal, the rejection of the nomination paper was proper.

5. In the first place, it was contended that the ground on which the Returning Officer had rejected the nomination paper of the petitioner was valid. The Tribunal is unable to subscribe to that view. The following facts which are not in dispute may facilitate the understanding of this question. The petitioner had filed his nomination paper (original whereof is amongst the paper) on 24th November 1951. In that nomination paper he had given his name in column No. 2 as Vayeda Ranchhodlal and had given his father's name in column No. 3 as Liladhar. He had signed the nomination paper as "Ranchhodlal Liladhar Vayeda". Before the Returning Officer as objection was taken that whereas the petitioner had described his name as Vayeda Ranchhodlal Liladhar the Election Commission had issued a direction amending the electoral roll by inserting the name of Ranchhodlal Liladhar Vayeda and allotting him No. 329 in the electoral roll for the Ahmedabad City No. 1 Constituency. In other words, the question boils down to this: Whether the petitioner's nomination paper in the name of Vayeda Ranchhodlal Liladhar could be upheld as valid when the electoral roll showed the name as Ranchhodlal Liladhar Vayeda. The Returning Officer treated this difference in the description of the name as violating the provisions of Section 33(5) of the Representation of the People Act, 1950 and rejected that nomination paper as invalid. Before the Tribunal Shri Patwari also contended that what respondent No. 1 had objected to before the Returning Officer was the identity of the petitioner but at the hearing he did not seriously dispute that the identity of the petitioner was established. Therefore, the tribunal thinks that this difference in the description of the name, where the surname is prefixed or suffixed to the name, does not materially affect the establishment of the identity of the petitioner and as such it cannot be said that there has been any failure on the part of the petitioner to comply with the provisions of Section 33 or Section 34 in this respect. In this connection reference may be made to the case of Begum Wahidul Hasan Vs. Amjadl Bano Begum Mohamad Ali, Sen & Podar page 487 1951-edition. In that case it was held that rejection of nomination paper was improper where a candidate signed as Begum Wahidul Hasan while the name entered in the roll was "Wahidul Hasan Begum". It was also held that objection as to the use of "Begum" as a prefix instead of as a suffix was technical and had no merit. For these reasons the Tribunal hold that the ground on which the Returning Officer had rejected the nomination paper of the petitioner was not correct and if this was the only ground on which objection to that nomination paper could be taken, the Tribunal would have had no hesitation in allowing the petition.

However, the ejection of the nomination paper was sought to be supported by Shri Patwari for respondent No. 1 on a different ground which, in the opinion of the Tribunal, is a valid ground. That ground is that in the nomination paper the petitioner had failed to state that he was as elector and had also failed to fill in column No. 8 of the nomination paper. In this connection following facts will have to be borne in mind. The last day for submitting nomination papers for this constituency was 24th November 1951 and it was on that day, as stated above, that this nomination paper was submitted by the petitioner. The date fixed for scrutiny of the nomination papers was 27th November 1951 and before that date the Returning Officer has received direction from the Election Commission through the Collector and Chief Electoral Officer, Ahmedabad to the effect the Election Commission agrees to the inclusion of the name in the electoral roll of Ranchhodlal Liladhar Vayeda and allotting him No. 329. On the day that the nomination paper was submitted the petitioner was not aware that the Election Commission had agreed to the inclusion of his name as an elector. In fact in column No. 7 of the nomination paper where the information as to the constituency in the electoral roll in which the name of the candidate was included, the petitioner had only stated this: "Election Commission's No. —, dated — Ahmedabad city constituency No. 1. (I have applied to the Secretary, Election Commission for including my name in the electoral rolls and as per letter of the Election Commission No. 93-3-51, dated 18th inst., to me instructions are expected in due course.)" As stated before, column No. 8 where the information regarding the serial number of the candidate in the electoral roll of the constituency was to be given was left blank. The question is whether such a nomination paper can be said to have fulfilled the requirements of the law. Shri C. C. Bhatt for the petitioner contended that the petitioner had applied to the Election Commission under Rule 20(2) of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950. That sub-rule contemplates that "Any person whose name is not included in the electoral roll of a constituency for the time being in force and who is entitled to be registered therein may apply to the Election Commission for an amendment of the roll by the inclusion of his name therein and if the Election Commission is satisfied, after such notice and such inquiry as it thinks fit, that the applicant is entitled to be registered therein, the Election Commission may direct the amendment of the electoral roll by inclusion therein of an entry relating to the applicant." The proviso to this sub-rule lays down that such an allegation shall not be entertained if it is not accompanied by a fee of rupees fifty, and in this particular case the applicant had remitted that amount. Now, under Rule 20(3) it is proved that "When a direction is issued under sub-rule (2) the electoral roll to which such list or direction relates shall be deemed to have been revised accordingly." Relying on this provision Shri Bhatt for the petitioner contended that the electoral roll for Ahmedabad City Constituency No. 1 must be deemed to have been revised by the insertion of the name of the petitioner. Shri Patwari for respondent No. 1 contended that the provisions of Rule 20 so far as they relate to the inclusion of the name of an applicant by payment of Rs. 50 runs counter to the provisions of section 25 of the Representation of the People Act, 1950 and that therefore, the Rule is *ultra vires* of the Representation of the People Act. The Tribunal had the advantage of hearing the learned pleaders on this point and also the benefit of the arguments of the Government Pleader who deputised for the Advocate General whom the Tribunal had requested to assist it, but in the view of the Tribunal this point need not be considered in the present case for even if it is assumed that the rule in question is *intra vires* the rejection of the nomination paper must be held proper on the ground that it failed to comply with the requirements of the law. Here the Tribunal assumes that in pursuance of Rule 20 the electoral roll should be deemed to have been revised with the name of the petitioner included therein. But the question is what is that date on which the revision as contemplated by Rule 20 takes effect. As pointed out earlier, at the time the petitioner submitted his nomination paper he was not aware that he was qualified to be chosen to fill the seat in question. Now, what happened subsequent to the entertainment of the nomination paper is a matter within the knowledge of the petitioner and the Returning Officer. The nomination paper is primarily to be nominated by the proposer and seconded by the seconder. The candidate's part comes only at the end where he gives his consent to the nomination made by the proposer and the seconder. Therefore, unless, a candidate is a qualified elector to the knowledge of his proposer and seconder when his nomination paper is presented the nomination made by them (proposer and seconder) cannot be characterized as nomination of a qualified elector. The very fact that column No. 8 was left blank is indicative of the fact that neither the proposer nor the seconder knew that the petitioner was qualified as an elector at the time they proposed and seconded his candidature. The argument that by reason of Rule 20 the petitioner should be deemed to have been qualified as an elector does not hold in this case because the nomination paper is to be scrutinized as it stood when it was presented.

7. The result, therefore, is that the nomination paper of the petitioner had failed to comply with the requirements of the law and was, therefore rightly rejected. Therefore, though the Tribunal does not agree with the ground on which the Returning Officer had rejected the nomination paper, it is of the opinion that the nomination paper was rightly rejected. In that view of the matter the petition will be dismissed with costs.

ORDER

The petition is dismissed. The petitioner shall pay Rs. 100 to respondent No. 1 as costs of and incidental to this petition and bear his own. Rest of the respondents to bear their own costs. The Tribunal makes no order as to costs for the Government Pleader.

(Sd.) B. C. VAKIL,
(Sd.) T. P. GHOGALE,
(Sd.) A. A. ADARKAR.

The 10th March 1953.

[No. 19/46/52-Elec.III.]

By Order,

P. R. KRISHNAMURTHY,
Assistant Secretary.